S.B.Civil Writ Petition NO.62/2005

Satya Narain & Anr.

vs

The CJ (Sr.Div.) & ACJM No.2, Jodhpur & Ors.

DATE OF ORDER : - 6.1.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Jitendra Chopra, for the petitioners.

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Heard learned counsel for the petitioners.

Perused the impugned order dated 8th Dec., 2004 by which the trial court did not permit the petitioners to file fresh written statement.

According to learned counsel for the petitioners, the petitioners came on record after the death of their predecessor and, therefore, the petitioners are entitled to file the written statement.

It appears that after the death of petitioners' predecessor, the petitioners were taken on record as legal representatives and before that petitioners' predecessor submitted written statement. The plaint was amended only to incorporate the consequential amendment, which

are required to be incorporated in cases where the legal representatives are taken on record. No material amendment has been made by the plaintiff in the plaint.

In view of the above, if the petitioners have any grievance, they may raise their objection before the appellate court in case any occasion arises for the petitioner to assail the order dated 8th Dec., 2003. I do not find any reason to permit the petitioners to invoke the jurisdiction under Article 227 of the Constitution of India.

The petitioners' evidence was closed by order dated 1st Nov., 2004, but the petitioners did not challenge that order till the next order dated 8th Dec., 2004 was passed against the petitioners. Therefore, because of this reason, the petitioners are not entitled for any equitable relief in extra ordinary jurisdiction under Article 227 of the Constitution of India and petitioner may challenge the said order dated 1st Dec., 2004 also in appeal in case any occasion arises for the petitioners to do so.

In view of the above, the writ petition of the petitioner is dismissed.

(Prakash Tatia), J.

c.p.goyal/-